

****NOT FOR PRINTED PUBLICATION****

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

BRIAN WATERMAN,

Plaintiff,

v.

MCKINNEY INDEPENDENT SCHOOL
DISTRICT,

Defendant.

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CASE NO. 4:13-CV-170

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

On June 11, 2014, the United States Magistrate Judge issued its report and recommendation [Doc. #77], this matter having been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. The Magistrate Judge recommended that Defendant's Motion for Summary Judgment [Doc. #28] be denied.

Defendant filed its objections to the report and recommendation on June 25, 2014 [Doc. #79]. Plaintiff filed his response to the objections on July 9, 2014 [Doc. #81].

Plaintiff sued Defendant for allegedly violating his right to engage in constitutionally protected speech. Defendant contends that the Magistrate Judge erred in finding that Plaintiff's speech was "protected speech," that there was a fact issue as to whether the McKinney Independent School District Board of Trustees took a single unconstitutional action, that there was a fact issue regarding the school board's motivation and pretext, that the statute of limitations has not expired for Plaintiff's claims, and that collateral estoppel does not apply to this case. The court has conducted a *de novo* review of the objections in relation to the pleadings

and applicable law. As the Magistrate Judge noted, this is a “close call,” and this case should proceed to trial on these claims. Defendant may raise these same objections at trial as well. After careful consideration, the court concludes that Defendant’s objections are without merit and are, therefore, overruled.

It is therefore **ORDERED** that the Report and Recommendation of United States Magistrate Judge [Doc. #77] is adopted, and Defendant’s Motion for Summary Judgment [Doc. #28] is **DENIED**.

So ordered and signed on

Aug 24, 2014

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge